

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-1
INTRODUCTION**

TABLE OF CONTENTS

| | | | |
|--------------|---------------------|--------------|---|
| 1240-5-1-.01 | Grievances. | 1240-5-1-.03 | Legal Base. |
| 1240-5-1-.02 | Agency Rule-making. | 1240-5-1-.04 | Administrative Review in Vocational Rehabilitation. |

1240-5-1-.01 GRIEVANCES. When an applicant for or recipient of assistance or services is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, he/she has the absolute right to appeal for a fair hearing by an impartial official, provided that actions taken pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.

Authority: TCA §§4-509 and 4-5-207. Administrative History: Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective April 19, 1983.

1240-5-1-.02 AGENCY RULE-MAKING. The rules of practice for the programs of assistance and services provided by the Tennessee Department of Human Services are not valid or effective against any person or party, nor may they be invoked by the agency for any purpose, until all of the requirements for rulemaking as set forth by the Tennessee Uniform Administrative Procedures Act (as amended) have been met.

Authority: TCA §4-5-207. Administrative History: Original rule filed January 19, 1977; effective February 18, 1977.

1240-5-1-.03 LEGAL BASE.

- (1) Tennessee's Public Welfare statutes and the Federal statutes of the Food Stamp Act, the Social Security Act (which includes Public Assistance, Medicaid, Social Services and Services for the Blind), require that there be provisions for appeals and fair hearings for applicants and recipients of assistance and services provided by the Department. The Tennessee Department of Human Services is responsible for fulfillment of hearing provisions in the assistance and services programs which provide for the hearings before the State Department. Such hearings shall meet the due process standards set forth in the US Supreme Court decision in *Goldberg v. Kelly*, 397 US 245 (1970) and the standards set forth in the Federal Regulations.
- (2) The Civil Rights Act of 1964 prohibits discrimination in the provision of assistance or services to applicants, recipients, or beneficiaries because of their race, color, or national origin.
- (3) The Tennessee Uniform Administrative Procedures Act (as amended), *TCA §4-5-301 et seq.*, requires the use of uniform procedures for the conduct of hearings on appeals held by all state agencies of Tennessee.
- (4) The Tennessee Uniform Procedures Act (as amended), *TCA §4-5-101 et seq.*, provides for the use of uniform procedures for agency rulemaking.

Authority: TCA §§4-5-101 and 4-5-301. Administrative History: Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983.

1240-5-1-.04 ADMINISTRATIVE REVIEW IN VOCATIONAL REHABILITATION SERVICES.

- (1) Each applicant for or recipient of Vocational Rehabilitation Services shall be advised of his/her right to the Administrative Review and Fair Hearing processes. This process provides individuals the opportunity and channels to resolve dissatisfactions which they may experience in the provision or denial of Vocational Rehabilitation Services.
- (2) An Administrative Review is an informal procedure through which the division provides an opportunity to an applicant or recipient of Vocational Rehabilitation Services, his/her parent, guardian, or representative, to express and seek resolution for his/her dissatisfaction with a division's action with regard to furnishing a denial of services. A client or applicant for services must file a request for an Administrative Review within ten (10) working days of notification of the contested action. Disputed services set forth in an Individual Written Rehabilitation Program (IWRP) and underway will be continued during the Administrative Review when requested. Excluded from continuation are services not begun or services contraindicated for medical or psychological reasons. In no case can the services be continued more than thirty (30) days from the effective date of the change, nor be continued beyond the statutory limitation of eighteen (18) months in extended evaluation.
- (3) An applicant for or recipient of services or his/her representative may submit a written request (Form VRAR 1) for an Administrative Review through his/her counselor to the regional supervisor. Within five (5) working days, the regional supervisor shall send written notification of receipt of the request for an Administrative Review to the client and/or his/her representative and the Director of Field Operations.
- (4) Upon receipt of a request for an Administrative Review, the counselor's immediate supervisor will contact the client and make a complete investigation (Supervisory Review) of the expressed dissatisfaction and attempt to resolve the issue. If the grievance is not resolved by the Supervisory Review, an Administrative Review will be scheduled.
- (5) Administrative Reviews are held by the regional supervisory staff of the division. The review shall be scheduled and held within fifteen (15) working days of the date of the request. An Administrative Review shall be conducted during regular agency working hours and located at a time and place convenient to the client and staff.
- (6) The applicant or recipient shall be informed in writing of the scheduled review date and site. The finding of the review shall be within five (5) days following the review and shall be in writing and address all issues involved. All parties involved in the review shall receive written notice of the finding. Documentation of the actions and decisions resulting from the Administrative Review shall be entered as part of the individual's case record.
- (7) The recipient shall be allowed to bring a representative with him/her to the review for purposes of assisting the recipient to understand the proceedings, but not for purposes of acting as an advocate.
- (8) The Division shall make every effort to resolve individual complaints at the Administrative Review level which is a pre-requisite to the Fair Hearing procedure. At the time of the Administrative Review, the applicant or recipient must be advised of his/her right to a Fair Hearing before an impartial official if dissatisfied with the findings of the Administrative Review.

Authority: TCA §§4-5-105, 14-1-105, 49-2805, and 49-2813; 34 CFR 361.48(a). **Administrative History:** Original rule filed January 20, 1984; effective February 19, 1984. Amendment filed April 30, 1985; effective July 14, 1985.